

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAIGE A. THOMPSON,

Defendant.

No. CR19-159-RSL

STIPULATED MOTION AND
~~PROPOSED~~ NON-WAIVER ORDER
UNDER FEDERAL RULE OF
EVIDENCE 502

Note on Motion Calendar: December 21,
2021

STIPULATION

Defendant Paige A. Thompson (“Defendant”) and Capital One Bank (USA), N.A./Capital One Financial Corp. (“Capital One”) by their undersigned counsel, hereby stipulate to and seek entry of a non-waiver order under Federal Rule of Evidence 502(d), showing the Court as follows:

WHEREAS, Defendant has served a subpoena on Capital One seeking, among other documents and information, a report prepared for Capital One by iDiscovery Solutions (“Report”), (attached as Exhibit A); and

WHEREAS, Capital One considers the Report protected by the attorney client privilege and work product protection because, among other things, iDiscovery Solutions (“iDS”) (1) was retained by Capital One’s outside counsel, Debevoise & Plimpton LLP (“Debevoise”), to review the process Capital One used to assess the scope of the 2019 hack,

STIPULATED MOTION AND ~~PROPOSED~~
ORDER
Case No. CR19-159-RSL

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1 confirm the related conclusions Capital One made about the extent of exposure of certain
 2 categories of personal information, and to allow Capital One to adequately comply with state
 3 data breach notification laws; (2) conducted its analysis at the direction of and in coordination
 4 with Debevoise, who actively participated in and directed iDS's work for the purposes of
 5 providing legal advice in anticipation of the litigation expected to follow the 2019 hack; and
 6 (3) delivered its Report to Debevoise at the conclusion of its analysis; and

7 WHEREAS, Capital One and the Defendant stipulate under Federal Rule of Evidence
 8 502(e) that Capital One's disclosure of the Report in this case does not waive any applicable
 9 privilege or protection that may apply to the Report or to any other documents and
 10 information. *See* Fed. R. Evid. 502(d) Advisory Committee's note to 2007 amendments
 11 ("Subdivision (e) codifies the well-established proposition that parties can enter an agreement
 12 to limit the effect of waiver by disclosure between or among them."); and

13 WHEREAS, Capital One and the Defendant seek entry of an order, as contemplated by
 14 Federal Rule of Evidence 502(d), incorporating their non-waiver stipulation and providing that
 15 Capital One's disclosure of the Report in this case shall not effect a waiver of any privileges or
 16 protections applicable to the Report or any other documents or information in this case or in
 17 any other federal or state proceeding. *See* Fed. R. Evid. 502(d) (allowing a federal court to
 18 "order that the privilege or protection is not waived by disclosure connected with the litigation
 19 pending before the court—in which event the disclosure is also not a waiver in any other
 20 federal or state proceeding"); and

21 WHEREAS, Capital One and the Defendant agree that entry of a stipulated non-waiver
 22 order will facilitate the resolution of the dispute over the Report and otherwise promote
 23 judicial economy.

24 NOW, THEREFORE, Capital One and the Defendant respectfully request that the
 25 Court enter an order incorporating the above non-waiver stipulation as contemplated by
 26 Federal Rule of Evidence 502(d). A proposed order is attached for the Court's consideration.
 27
 28

1 Respectfully submitted this 21st day of December, 2021.

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3 FEDERAL PUBLIC DEFENDER

ORRICK, HERRINGTON & SUTCLIFFE LLP

4 /s/ Mohammad Ali

5 Hamoudi

Mohammad Ali Hamoudi

6 Nancy Tenney

7 Christopher Sanders

8 WAYMAKER LLP

/s/ Aravind Swaminathan

Aravind Swaminathan, WSBA #33883

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Telephone: (206) 839-4300

Attorneys for Capital One

9 /s/ Brian Klein

10 Brian Klein

11 Melissa Meister

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13 *Attorneys for Paige Thompson*

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STIPULATED MOTION AND ~~PROPOSED~~

ORDER

Case No.: CR19-159-RSL

STIPULATED NON-WAIVER ORDER

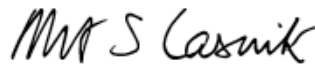
IT IS HEREBY ORDERED:

1. Pursuant to Federal Rule of Evidence 502(d), neither Capital One's production of the report by iDiscovery Solutions ("Report") nor its non-assertion of any claim of privilege or protection over the Report in this case is a waiver of any applicable privilege or protection that may apply to the Report or to any other documents and information in (i) this case or (ii) any other federal or state proceeding.

2. Neither this Order nor Capital One's production of the Report shall require Capital One to produce any other documents or information (including testimony) in this case other than the Report at issue.

3. Neither this Order nor Capital One's production of the Report may be used in this case or in any other proceeding to argue that Capital One has waived any privilege or protection over any documents or information.

DATED this 29th day of December, 2021.



Robert S. Lasnik
United States District Court Judge

EXHIBIT A

UNITED STATES DISTRICT COURT

for the

United States of America Western District of Washington

v.

PAIGE A. THOMPSON

Defendant

Case No. CR19-159RSL

SUBPOENA TO TESTIFY AT A HEARING OR TRIAL IN A CRIMINAL CASE

To: Capital One Bank (USA), N.A./Capitol One Financial Corp.
 Attn: 12070-7000 (Subpoena Dept)
 15000 Capital One Drive
 Richmond, VA 23238-1119
 c/o Debevoise & Plimpton LLP
 919 Third Avenue, NY, NY 10022 via jjpastore@debevoise.com

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place shown below to testify in this criminal case. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place of Appearance: United States District Courthouse 700 Stewart Street Seattle, WA 98101	Courtroom No.: Judge Lasnik, Ct. 15106 Date and Time: March 14, 2022 @ 10:00 a.m.
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You must also bring with you the following documents, electronically stored information, or objects (*blank if not applicable*): SEE ATTACHMENT A

If records are received before March 14, 2022 you do NOT need to appear at the above date and time. Thank you

(SEAL)

Date: 12.8.21



CLERK OF COURT

Signature of Clerk or Deputy Clerk

Issued in Blank

The name, address, e-mail, and telephone number of the attorney representing (*name of party*) Paige Thompson
 _____, who requests this subpoena, are:

Nancy Tenney
 Assistant Federal Public Defender
 1601 5th Avenue, Ste 700
 Seattle, WA 98101
 Phone: (206) 553.1100
 Fax: (206) 553.0120

* please contact Investigator Stacey Brownstein at
 253.593.6710 if you have any questions. Please email the
 requested records to stacey_brownstein@fd.org

Case No. CR18-5489BHS

PROOF OF SERVICE

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of

\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Attachment A

This subpoena seeks production of only the following four documents:

1. iDiscovery Solutions' assessment regarding the scope and impact of the Cyber Incident;
2. Management's Root Cause Analysis;
3. the "Project Star Post-Incident Report;" and
4. Capital One's internal analysis of the personal identifying information ("PII") impacted in the Incident.